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Court of Common Pleas

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By: DANIEL J. MYERS 0087909

Confirmation Nbr. 1285997

DOROTHY CHAMBERS, ET AL.

CV 18 892163

vs.

Judge: DICK AMBROSE

MARK BARRINGER, ET AL.

Pages Filed: 10

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

DOROTHY CHAMBERS
7185 Schneider Ct.
Cleveland, OH 44102

CHARLENE IRWIN
7185 Schneider Ct.
Cleveland, OH 44102

Plaintiffs,

v.

MARK BARRINGER
DBA Bear Property Management
24433 E. Oakland
Bay Village, OH 44140

UNKNOWN SURETY COMPANY

Defendants.

Case No.:
Judge:

COMPLAINT

Jury Demand Endorsed Hereon

Plaintiffs Dorothy Chambers and Charlene Irwin, by and through his undersigned counsel, hereby submit their Complaint to this Court against Defendants Mark Barringer (“Barringer”) and Unknown Surety Company (“Surety”), collectively referred to as Defendants, and avers and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Dorothy Chambers is the owner of the property located at 7287 Schneider Court, Cleveland, OH 44102 (“Property”), and resides in Cleveland, Ohio.
2. Plaintiff Charlene Irwin is the daughter of Dorothy Chambers, and also resides in Cleveland, Ohio.

3. Defendant Mark Barringer is and was a natural person residing in Cuyahoga County, Ohio, who contracted with Dorothy Chambers and/or Charlene Irwin to have work performed on the Property. Defendant Barringer is believed to reside in Bay Village, Ohio, but it is unclear if he is still relocated to another address due to his plea involving alleged stalking/cameras pointed at neighbor's yards.
4. Barringer is a contractor who performs general contracting and construction services in Cuyahoga County.
5. This lawsuit involves malfeasance, omissions, and wrongful/illegal conduct and other acts of Barringer occurring or supposed to have occurred in Cleveland, Ohio.
6. The amount in controversy is in excess of \$25,000.
7. In relation to the Counts and claims alleged in this Complaint, only those claims and allegations in the "Action on Bond" apply or relate to Defendant Surety, unless Defendant Surety is expressly mentioned in an allegation.

OTHER FACTS COMMON TO ALL COUNTS

8. In winter 2017, the Property suffered fire damage due what was believed to be bad wiring in the wall.
9. The Property was a duplex, was occupied by renters of Plaintiffs, and earned rent at the rate of \$500 per unit per month, or \$1000 per month for the occupied Property as a whole.
10. On or around February 25, 2017, Barringer offered to perform fire repair construction services on the Property, and emailed the terms of his offer to the Plaintiffs, via Charlene Irwin. A true and accurate copy of those terms are attached hereto as Exhibit 1.
11. Exhibit 1 constituted the original agreement between the parties, and the work was all going to be performed for \$22,070, including obtaining all required permits.

12. On or around February 25, 2017, Barringer in an email to Charlene Irwin and Dorothy Chambers, attached as Exhibit 1, represented that he would be obtaining all permits to perform work on the Property.
13. Barringer subsequently sent multiple emails and text messages to Charlene Irwin, for her and Dorothy Chambers, stating that he had obtained permits, had gotten extensions on the work from the City of Cleveland, and had arranged for inspections, etc.
14. All representations about permits were a lie, were false, and were made intentionally, knowing of their falsity, with the intent that the Plaintiffs rely on them by contracting with Barringer, and paying Barringer at least \$11,500.
15. Plaintiffs paid \$1,500 cash to Barringer on or around March 10, 2017 in reliance on his promise that he would use it to obtain permits and a dumpster.
16. Plaintiffs also paid \$10,000 via cashier's check to Barringer, for a total of \$11,500, on or around March 10, 2017 based on the prior representations.
17. Barringer never intended on obtaining permits, and merely made these false, material statements, to induce reliance on them, and the Plaintiffs actually and reasonably relied on them by making payments of \$11,500.
18. Barringer, by representing he would obtain permits, was also representing that he would be licensed, insured, and bonded, which is a prerequisite in the City of Cleveland to obtaining permits.
19. These representations and implications were also false, and were made in the same manner as the misrepresentations concerning permits.

20. On April 2, 2017, Barringer represented that he had obtained permits, but had been hospitalized for health issues, and specifically instructed Charlene Irwin to “[t]ell your Mom NOT to go downtown. I have already pulled of the permits.”
21. Barringer sent numerous, additional emails falsely claiming and stating that permits were obtained or work was being done pursuant to permits. He did this to attempt to cover up and conceal his prior fraudulent statements and his illegal work.
22. Upon information and belief, Barringer was not licensed, bonded, insured, or legally permitted to do the work, and such was never communicated to the Plaintiffs, who were innocent in their reliance on representations from Barringer claiming he was licensed and permitted.
23. Barringer never completed the work, failed to perform the work in a good and workmanlike manner, failed to act in good faith and fair dealing with Plaintiffs, and otherwise failed and refused to properly perform under the contract, in addition to making intentional and knowingly false representations of fact.
24. As a direct and proximate results of the misrepresentations, fraud, shoddy work, incomplete work, breach of contract, and other conduct alleged herein, the Plaintiffs have been harmed and continue to suffer economic harm in an amount in excess of \$25,000, including moneys paid to Barringer, costs of code violations, costs to complete and repair the work, lost rent, and other economic and out-of-pocket costs. They have lost the benefit of their bargain.
25. Dorothy Chambers, as a direct and proximate result of Barringer’s conduct, faced prosecution by the City of Cleveland for code violations and lack of timely repairs being performed at the Property.

COUNT I – BREACH OF CONTRACT

- 26. Plaintiffs incorporate the foregoing allegations as is fully rewritten herein.
- 27. Plaintiffs and Barringer had a contract, attached hereto as Exhibit 1.
- 28. Plaintiffs fully performed all of their obligations up to the point of Barringer's material breach and failure to perform, and they paid \$11,500.
- 29. Barringer breached its contract pursuant to the conduct outlined previously.
- 30. As a direct and proximate result, Plaintiffs suffered the harm and damages as outlined above, including costs to complete, repair, fix, and money lost that was overpaid to Barringer.

COUNT II – RESTITUTION / ILLEGAL CONTRACT

- 31. Plaintiffs incorporate the foregoing as if fully restated herein.
- 32. Barringer acted illegally and in bad faith by performing construction services without a license, without permit, without inspections, and without legal ability to do so.
- 33. It violates State and Local law to perform the work allegedly performed by Barringer without permit or licensed.
- 34. Barringer concealed this illegality from Plaintiffs such that Plaintiffs had no knowledge of it until the end of the project, and had already paid Barringer.
- 35. As a direct and proximate result of this illegal conduct by Barringer, Plaintiffs are entitled to a full refund of all moneys paid to Barringer, and to be placed back into the position as if they had never contracted with Barringer.

COUNT III – FRAUD AND MISREPRESENTATION

- 36. Plaintiffs incorporate the foregoing as if full rewritten herein.

37. Defendant Barringer made intentionally false, knowingly false statements to Plaintiffs as indicated and at the time, in the manner, and containing the substance outlined above.
38. These statements were false at the time they were made, and Barringer knew of their falsity. Barringer, when he said those things, had no present intention of performing the obligations, and then covered up and concealed the failure after-the-fact by lying about it to Plaintiffs and specifically instructed Plaintiffs not to go downtown to check on the permit status, because he knew he lied to them about obtaining them.
39. Barringer made these misrepresentations of fact intentionally, and or in reckless disregard for their accuracy, and did so with the intent to induce Plaintiffs into relying on them by paying \$11,500, which they reasonably and actually did do in reliance on the misrepresentations.
40. As a direct and proximate result of the misrepresentations, Plaintiffs have suffered the harm and damages outlined previously.

COUNT IV – SUIT ON BOND / BREACH OF CONTRACT ON BOND – Against

Defendant Surety.

41. Plaintiffs incorporate the foregoing allegations as if fully restated and re-alleged herein.
42. Defendant Surety was surety on a bond with the other Defendant was principal, covering all damages occurring due to their work in the City of Plaintiffs, including damages arising from work done for Plaintiffs.
43. Defendants have directly and proximately caused damage to Plaintiffs as outlined above, including but not limited to all costs and harm outlined above, for which coverage is provided by the clear language of the bond.

44. The work done was in violation of code, and such violations directly and proximately caused the problems outlined and costs and damages outlined previously.
45. A claim is hereby made against the bond Surety by Plaintiffs, and by operation of R.C. 2307.06 Plaintiff is entitled to the penal sum of the bond.
46. Defendant Surety must therefore pay up to \$25,000, the penal sum of the bond, in accordance with the terms of the bond and R.C. 2307.06, to Plaintiff to cover all damages caused by the other Defendants.

WHEREFORE, Plaintiff prays for relief as follows:

- a. Judgment against Defendant Surety in relation to Count IV in the amount of \$25,000 exactly;
- b. Judgment against Defendant Barringer as to Counts I-III, for an amount in excess of \$25,000 for compensatory damages, including consequential and economic damages, and for Count III, those same damages, plus punitive damages (capped at the maximum rate permitted by the Ohio Constitution, U.S. Constitution, and Ohio statutory law), attorney's fees,
- c. For judgment against all parties, for the amounts indicated above, and also costs of this action, pre-judgment and post-judgment interest, and all other remedies this Court deems equitable and just.
- d. Costs of this action and all other relief this court deems equitable and/or just.

Respectfully Submitted,

/s/ Daniel J. Myers

Daniel J. Myers, Esq. (0087909)

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Counsel for Plaintiffs

JURY DEMAND

Plaintiffs hereby requests a trial by jury of the maximum size permitted by law for all claims so able to be tried.

/s/ Daniel J. Myers

EXHIBIT 1



Charlene Irwin <char419@gmail.com>

7185 Schneider Ct Fire Restoration Price Breakdown

1 message

MARK BARRINGER <barringermeb@gmail.com>

Sat, Feb 25, 2017 at 4:20 PM

To: char419@gmail.com

I will pull 6 separate permits for ALL demo/ remodel of fire damage. \$220.00

We will need (2) forty yard dumpsters. Second one for your shed/garage that you guys are knocking down. \$500.00 each Total \$1,000.00

BASEMENT which includes repairing/ replacing all damaged electrical, plumbing, replacing/ cleaning duct work. Replacing window on westside (currently covered with plywood) \$1,400.00

1ST FL KITCHEN disconnect and temporarily move appliances to a separate room so that we can demo reconstruct kitchen. Tear out laminate floor, tear out fire damaged wall. Remove/ replace ceiling light fixture. Replace fire damaged electrical, plumbing, drain supply. Replace 10" diffuser. Install new insulation. Re frame load bearing studs, and framing. Install new drywall \$2,700.00

1ST FL BATHROOM Tear out damaged floor and laminate floor. Tear out shower surround, remove toilet. Remove fire damaged drywall and studs. Install new load bearing studs, exterior wall insulation, install new drywall, green board (water proof drywall), new tub surround. Install new light fixture, Clean and re install vanity and faucet. Replace sink drain supply. Install new light fixture, install new tub faucet, diverter, new shower head. Install new toilet Install new linoleum floor \$2,500.00

CLOSET/ DINING ROOM / 2 BEDROOMS Tear out carpeting and padding in all rooms, remove clean light and re install. Bedrooms- Remove carpet, padding, paneling on walls, repair- replace damaged drywall walls. \$1,100.00

STAIRCASE Replace door, clean everything down, paint. \$400.00

2ND FL KITCHEN Remove flooring, tear out damaged drywall, studs, install new load bearing framing, new electrical, plumbing accordingly. Install insulation inside all exterior walls that are opened up. Remove/ replace kitchen window. Remove pre hung door during construction and re install when complete with new framing. Remove replace upper cabinets, remove replace damaged lower cabinet. Remove replace countertop. Remove, re set sink, faucet, replace drain assembly \$4,700.00

FOYER Remove window , reframe and install new window \$300.00

BATHROOM Remove flooring, tear out damaged walls, reframe studs, Install new electrical, Remove, replace toilet, replace ceiling light, install new linoleum floor. \$1,100.00

LIVING ROOM Remove carpet, padding, install new floor, clean everything down, replace light \$200.00

2 BEDROOMS, CLOSET Remove carpet, and padding, remove, replace broken window, replace 2 lights, clean everything down, prep for paint \$750.00

EXTERIOR ROOF/ SIDING Tear out, remove fire damaged materials. Reframe and install plywood accordingly, tar paper, shingles, drip edge, gutters with downspouts. Replace window wraps, remove (salvage existing siding per your request). Replace all damaged wall boards, siding, light fixture \$1,800.00

Instead of breaking the painting down by room. I quote per half of house (interior). This quote includes the material cost. 2 coats of kilz stain blocking paint throughout ALL walls and ceilings. Then a flat white for the ceiling. 2 coats on the walls (You can decide on colors). \$1,300.00 per half \$2,600.00 total for ALL painting (paint and labor included).

Flooring has a total of 1,552 sq feet thru out entire house. Materials plus labor \$ 1,800.00

There are several "code upgrades" throughout this job that I am not charging you for. My math brings this total to \$22,070.00 which leaves \$2,000.00 in your pocket from the claim. As we discussed the other day I ask for 50% upfront to offset material costs as I will be providing EVERYTHING necessary to complete this job. 50% down is \$11,035.00. I will pull permits immediately and handle the building dept as everything will be completed and inspected per their compliance. As long as there are no further hidden problems I estimate this job completeing within 30 days. As soon as I receive the down payment we can begin immediately. Im more than happy to stop by your house at your convenience for the check. Please look it over and call me with any questions.

Thanks,